

## **SETTLEMENT AND RELEASE AGREEMENT**

This Settlement and Release Agreement (the "Agreement") is entered into and made effective on this 4<sup>th</sup> day of November, 2019, by and between the City of MESA, Arizona, an Arizona municipal corporation ("CITY") and Ramon Batista, #22002 ("EMPLOYEE") (collectively, the "PARTIES").

### **I. AGREEMENT:**

For valuable consideration, the receipt of which is hereby acknowledged, and in consideration of the mutual covenants and conditions contained herein, EMPLOYEE and CITY hereby stipulate and agree as follows:

**A. Waiver and Release of EMPLOYEE'S Claims and Rights.** EMPLOYEE knowingly and voluntarily acknowledges, warrants and agrees to irrevocably release and discharge CITY and its agents, officers, directors, elected and appointed officials, employees and affiliated entities and successors in interest from and against all present or future claims, rights, charges, damages and actions of every kind, known or unknown, whenever they arose, that arise out of or are related to the EMPLOYEE's employment with CITY, including but not limited to any claim, right, charge, damage or action arising under any federal, state or local discrimination statute, including but not limited to, Title VII of the Civil Rights Act of 1964, the Reconstruction Era Civil Rights Act, the Equal Pay Act, the Americans with Disabilities Act, the Family Medical Leave Act, the Arizona Civil Rights Act, the Arizona Employment Protection Act or under any other provision or theory of law or contract, either statutory or common law, including but not limited to breach of contract, breach of the covenant of good faith and fair dealing, wrongful termination or defamation.

**B. EMPLOYEE'S Waiver and Release of Claims and Rights Under the ADEA.** EMPLOYEE, in executing this Agreement, knowingly and voluntarily acknowledges, warrants and agrees to irrevocably waive, release and discharge CITY and its agents, officers, directors, elected and appointed officials, employees and affiliated entities or successors in interest from and against all claims, rights, charges, damages and actions of every kind, known or unknown, arising under the Age Discrimination in Employment Act (ADEA), which arose on or before the effective date of this Agreement. EMPLOYEE acknowledges, warrants, and agrees that he has consulted with an attorney or other legal representative prior to signing this Agreement; that under the ADEA, he has been given and has the right to take twenty-one (21) days to consider this Agreement before signing it; and that he may, within seven (7) days after signing this Agreement, revoke his agreement to waive any rights or claims under the ADEA. In the event EMPLOYEE executes this Agreement prior to the expiration of twenty-one (21) days, EMPLOYEE acknowledges that he has, upon the advice of counsel, and for the purpose of expediting settlement of this matter, expressly waived his right to take twenty-one (21) days to consider this Agreement. In the event EMPLOYEE exercises his right under the ADEA to revoke this Agreement, written notice of EMPLOYEE'S intent to revoke this Agreement shall be delivered to the City of Mesa, c/o Christopher J. Brady, City Manager, 20 E. Main Street, Suite 750, P.O. Box 1466,

CITY, Arizona 85211-1466, with a copy to Jacqueline Ganier, Assistant City Attorney, 20 E. Main Street, Suite 850, P.O. Box 1466, Mesa, Arizona 85211-1466. EMPLOYEE acknowledges and agrees that if he revokes the Agreement pursuant to this Section, none of the provisions of the Agreement shall be effective or enforceable against CITY, and CITY shall retain all rights and defenses with respect to any claims as though no Agreement had been reached.

**C. Consideration for Waiver and Release of Claims and Rights.** CITY acknowledges and agrees that pursuant to this Agreement and in recognition of EMPLOYEE'S waiver of all his claims and rights:

1. EMPLOYEE hereby voluntarily resigns from CITY employment effective November 4, 2019.

2. CITY will pay EMPLOYEE a total of six (6) months' salary, not including benefits, and minus all applicable withholding and other deductions required by law.

3. City will pay EMPLOYEE all sick, vacation, and discretionary time accrued through his date of resignation, equal to eight-hundred sixty-three point 3 (863.3) hours.

4. As additional consideration for EMPLOYEE's waiver and release of claims under the ADEA, as set forth in Section I.B of this Agreement, EMPLOYEE will be entitled to purchase his City-issued gun in accordance with normal Mesa Police Department procedures; he will be allowed to keep his City-issued cell phone (not including any service plan); and he will be allowed to keep his Mesa Police Department badge, subject to AZ POST rules and regulations.

**D. Form of Payment.** The benefits and consideration described in Section I.D.2 and I.D.3 are consideration in exchange for EMPLOYEE's waiver and release of any and all potential claims set forth in Section I.A of this Agreement. The benefits and consideration described in Section I.D.4 are consideration in exchange for EMPLOYEE's waiver and release of potential claims under the ADEA set forth in Section I.B of this Agreement. EMPLOYEE understands and acknowledges that he is responsible for seeking legal and financial advice to determine the tax implications, if any, of this settlement.

**E. Payments to EMPLOYEE.** EMPLOYEE acknowledges and agrees that he is not entitled to receive, and expressly waives any right to any additional payment or receipt of, any additional employee benefits, monies, consideration or other compensation from CITY for entering into this Agreement. EMPLOYEE further acknowledges and agrees that, as of the date of this Agreement, he has received from CITY all accrued employee benefits, wages and other compensation due and owing to him, except for the consideration specifically identified in Section I.C above, and upon execution of this Agreement, that no further employee benefits, wages or other compensation from CITY are due and owing to EMPLOYEE arising out of or related to the claims alleged by EMPLOYEE, as stated in the

above RECITALS.

**F. Indemnification.** EMPLOYEE agrees to defend, hold harmless and indemnify CITY from and against any and all claims, losses, costs, damages or expenses, including without limitation, reasonable attorneys' fees and costs, arising out of EMPLOYEE's breach of this Agreement. EMPLOYEE further agrees that to the extent that he is married at the time of executing this Agreement, that he will indemnify the City from any claims, losses, damages, causes of action or any other costs or expenses claimed by his spouse based on any claims, charges, damages, rights, events or actions released in this Agreement.

**G. Denial of Liability.** By entering into this Agreement neither party admits, and each party affirmatively denies, that he/it has committed any actionable wrong, including, but not limited to, any breach of contract or breach of the covenant of good faith and fair dealing, or violation of any Federal or State law, CITY policy, personnel rule, tort or any civil rights statute.

**H. Confidentiality.** EMPLOYEE covenants that, at no time before the date of the signing of this Agreement, has he reviewed, discussed, or disclosed, orally or in writing, the existence of the Agreement, the negotiations or discussion leading to the Agreement, or any of its terms or conditions with any person, organization or entity other than his spouse, attorney, or tax consultant. EMPLOYEE further agrees that from the date of signing this Agreement onward, he will keep the negotiations and discussions leading to this Agreement, and the terms and conditions of this Agreement strictly confidential and, except as may be required by law, will not review, discuss or disclose, orally or in writing, the existence of this Agreement, the negotiations leading to this Agreement, or any of its terms or conditions with any persons, organization, or entity, other than his spouse, attorney, or tax consultant, on the condition that disclosure by such persons shall be deemed a breach of this Agreement. If EMPLOYEE is required by law through subpoena or otherwise to disclose information described in this Section I.H, he will immediately contact CITY's City Attorney to inform him/her of that fact and to provide CITY an opportunity, if necessary, to challenge the legal process which EMPLOYEE believes would result in the disclosure of such information.

CITY agrees that it will not disclose the existence or terms of this Agreement to any person inside or outside the CITY, other than to those having a material and legitimate business necessity for the information, or as required by law, including the Arizona public records law or in response to a valid subpoena or court order. If CITY receives a valid subpoena or other court order, or a valid public records request, for the information covered under this Section I.H, CITY will notify EMPLOYEE or EMPLOYEE's attorney and allow EMPLOYEE a reasonable time period to challenge such order or request in a competent court of law.

**I. Non-Disparagement.** As a material inducement for CITY to enter into this Agreement, EMPLOYEE agrees that from this time forward he will not (i) make any negative, disparaging, derogatory or defamatory comments about CITY, its agents, officers, directors, elected or appointed officials, employees, volunteers, and affiliated entities and successors in interest; and (ii) directly or indirectly disclose or disseminate or use any

confidential information concerning CITY.

**J. Media Statements.** If media inquiries arise regarding EMPLOYEE'S resignation or any other matter under this Agreement, EMPLOYEE will state that he has chosen to resign and pursue other interests and opportunities and he thanks CITY for the opportunity to serve as its Police Chief. EMPLOYEE will have no further comment. CITY will respond to media inquiries that it thanks and appreciates EMPLOYEE for his service and that it wishes EMPLOYEE the best moving forward.

**K. Neutral References.** CITY will refer all inquiries or requests for information regarding EMPLOYEE or his employment to the CITY's Human Resources Director, who will not make any disparaging remarks concerning EMPLOYEE. If asked, the Human Resources Director will respond, in writing, and will only provide the following information unless otherwise required by law: "EMPLOYEE was employed by CITY from (start date) to (resignation date). EMPLOYEE was the Mesa Police Chief and voluntarily resigned to pursue other opportunities." The Human Resources Director will also provide EMPLOYEE's salary history, if requested. The terms of this Section I.K shall be null and void in the event EMPLOYEE violates any term of this Agreement, including but not limited to, Sections I.H, I.I., or I.J of this Agreement.

**L. Violation of Terms; Clawback.** EMPLOYEE agrees that in the event he files any claim, lawsuit, proceeding or in any other manner seeks to invalidate any provision of this Agreement, or violates Sections I.H, I.I., or I.J of this Agreement, CITY shall be entitled to clawback and fully recover any and all sums paid to or on behalf of EMPLOYEE under the terms of this Agreement.

## **II. GENERAL TERMS:**

**A. Severability.** Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term or provision shall be deemed not to be a part of this Agreement.

**B. Binding Effect.** This Agreement shall be binding upon EMPLOYEE, and upon his heirs, representatives, executors, administrators, successors and assigns, and shall inure to the benefit of CITY, and each of them and to their heirs, representatives, executors, administrators, successors and assigns.

**C. Representation/Attorneys' Fees.** EMPLOYEE and CITY acknowledge and agree that each has been, or has had the opportunity to be, represented by an attorney in connection with the preparation, execution and delivery of this Agreement. In the event legal proceedings are brought or an attorney is retained by any party to the Agreement to enforce the terms of this Agreement, or for the interpretation of any provision herein in dispute, the prevailing party shall be entitled to recover, in addition to any other remedy, reimbursement for reasonable attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith. "Legal Proceedings" shall include, but are not limited to, all

administrative proceedings, appeals from a lower court judgment as well as proceedings in state, federal or bankruptcy court.

**D. Governing Law.** Except where preempted by the laws of the United States, this Agreement shall be deemed to be made under, governed by, and construed in accordance with the laws of the State of Arizona. Proceedings to enforce any provision of this Agreement or to obtain any remedy with respect hereto shall be brought in the Superior Court of Maricopa County, Arizona or in the Phoenix Division of the United States -District Court for the District of Arizona and for this purpose each party hereby expressly and irrevocably consents to the jurisdiction of either court.

**E. Waiver.** No waiver of any of the terms or conditions of this Agreement, and no waiver of default or failure of compliance, shall be effective unless in writing, and no waiver furnished in writing shall be deemed a waiver of any other term or provision or any future condition. Failure of any party to exercise any right, remedy or option arising out of a breach of this Agreement shall not be deemed a waiver of any right, remedy or option with respect to the continuance of any such breach, or any subsequent or different breach.

**F. Captions.** Captions and paragraph headings used herein are for convenience only, are not a part of this Agreement, shall not be deemed to define, limit, amplify or alter any provisions hereof, and shall not be deemed relevant in construing this Agreement.

**G. Interpretations.** To the extent permitted by the context in which used, (i) words in the singular number shall include the plural, words in the masculine gender shall include the feminine and neuter, and vice versa, and (ii) references to "persons" or "parties" in this Agreement shall be deemed to refer to natural persons, corporations, limited liability companies, general and limited partnerships, trusts and all other entities. No listing of specific instances, items or matters in any way limits the scope or generality of any portion of the text in this instrument where found, and any use of the word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to." This Agreement is the result of negotiation between the parties and is to be interpreted as a whole, in accordance with its fair meaning and in the manner which will most closely achieve the intention of the parties as expressed herein, without application of any rule or presumption requiring construction against the party with primary drafting responsibility.

**H. Amendments.** No provision of this Agreement may be amended, modified, waived, rescinded, deleted or supplemented except by a written document executed by the party against whom enforcement of such amendment, modification, waiver, rescission, deletion, supplementation, or termination is sought.

**I. CITY Policy.** This Agreement does not imply, and shall not be construed to be, official CITY policy with respect to the resolution of the issues in dispute herein. This Agreement shall not be admissible in any other proceeding, except proceedings brought to enforce the terms of this Agreement.

**J. Acknowledgement.** EMPLOYEE acknowledges, warrants, represents,

understands and agrees in deciding to sign this Agreement:

(1) That he has consulted with, or had the opportunity to consult with, an attorney before signing this Agreement;

(2) That he has thoroughly and carefully discussed all aspects of his rights and obligations under this Agreement with his attorney and any other legal or non-legal representative to the extent he wished to do so;

(3) That he has had a reasonable and sufficient amount of time to carefully read, understand and consider all of the terms and provisions of this Agreement and whether to enter into this Agreement;

(4) That he and/or his attorney have participated in drafting this Agreement to the extent they wished to do so;

(5) That he has relied upon his own judgment and that of any persons of his own choosing who have provided advice or counsel to him regarding this Agreement;

(6) That he did not rely on and has not relied upon any representation or statement made by CITY, or by any of CITY's employees, officers, directors, or attorneys, other than those representations and/or statements expressly set forth herein, with regard to the subject matter, basis or effect of this Agreement, or for any other purpose;

(7) That this Agreement is written in a manner that is understandable to EMPLOYEE and that he has read, understood and agreed to all the provisions set forth in this Agreement;

**K. No Knowledge of Other Proceedings.** That he has no knowledge of the existence of any lawsuit, charge or proceeding against CITY or any of its officers, directors, agents, or employees arising out of or connected with any of the matters herein released.

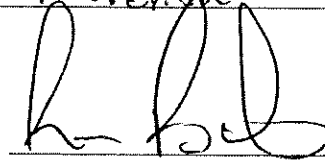
**L. Voluntary Waiver.** That he understands and agrees that by entering into this Agreement, he is voluntarily waiving his rights to challenge or contest any disciplinary action in any internal, administrative or litigated context. EMPLOYEE further warrants that he has not instituted, and will not institute, any action against CITY or any of its agents, representatives or employees, arising out of or related to his employment, his reassignment, the recommended disciplinary action, his retirement or any actions or statements by CITY, its agents, representatives or employees made prior to the effective date of this Agreement relating to his employment, his reassignment, the recommended disciplinary action, or his retirement.

**M. Subsequently Discovered Facts.** CITY and EMPLOYEE acknowledge that each party may hereafter discover facts different from or in addition to those that party now knows of or believes to be true with respect to the matters released herein or set forth herein, and each party hereto agrees that the releases and agreements contained herein shall be and will remain effective in all respects, notwithstanding such different or additional facts. This

Agreement is intended to hereby fully and forever settle and release all matters and claims against CITY and EMPLOYEE relative to and arising out of the employment and/or retirement of EMPLOYEE, which do now exist, may exist in the future, or have existed in favor of either party to this Agreement. In furtherance of such intention the releases and agreements given herein shall be and remain in effect as full and complete releases and agreements, notwithstanding the discovery or existence of such additional claims or facts relative thereto, and each party to this Agreement expressly waives the benefits of any statutory provision that would in any manner negate or impair the agreements and releases contained herein.

IN WITNESS WHEREOF, the parties have executed this Agreement effective the day and year first written above.

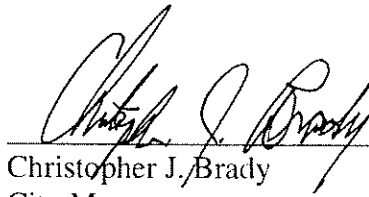
DATED this 4th day of November, 2019.



Ramon Batista  
Employee

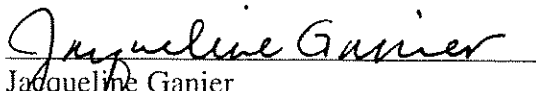
STATE OF ARIZONA                    )  
  ) ss.  
County of Maricopa                )

Subscribed and sworn to before me by Ramon Batista on this 4 day of  
November, 2019.



Christopher J. Brady  
City Manager

Approved as to Form:

  
Jacqueline Ganier  
Assistant City Attorney

*Signed before me on November 4, 2019.*  
*Agnes Goodwine*  
*Deputy City Clerk*